

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2495

Introduced by Assembly Member Grove

February 24, 2012

An act to amend Section ~~20305~~ 3515.7 of the Government Code, relating to public ~~employees' retirement~~ *employees*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2495, as amended, Grove. Public ~~employees' retirement:~~ *exclusions; employees: fair share payments.*

Existing law provides that once an employee organization is recognized as the exclusive representative of an appropriate unit, it may enter into an agreement with the state employer providing for organizational security in the form of maintenance of membership or fair share fee deduction. Existing law requires the state to deduct the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee or the fair share fee and to remit these fees monthly to the recognized employee organization.

This bill would authorize any employee subject to a fair share fee to instead instruct the state to deduct and pay sums equal to the fair share fee to a retirement savings plan of the employee's choosing, except as specified.

~~Existing law creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. Existing law establishes the criteria for membership in PERS and excludes from membership an employee whose appointment or employment contract~~

does not fix a term of full-time, continuous employment in excess of 6 months, unless, among other exceptions, the person is employed by the Department of Forestry and Fire Protection in one of the positions that provides state safety membership or state peace officer/firefighter membership, as specified.

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3515.7 of the Government Code is
2 amended to read:

3 3515.7. (a) Once an employee organization is recognized as
4 the exclusive representative of an appropriate unit it may enter
5 into an agreement with the state employer providing for
6 organizational security in the form of maintenance of membership
7 or fair share fee deduction.

8 (b) The state employer shall furnish the recognized employee
9 organization with sufficient employment data to allow the
10 organization to calculate membership fees and the appropriate fair
11 share fees, and shall deduct the amount specified by the recognized
12 employee organization from the salary or wages of every employee
13 for the membership fee or the fair share fee. These fees shall be
14 remitted monthly to the recognized employee organization along
15 with an adequate itemized record of the deductions, including, if
16 required by the recognized employee organization, machine
17 readable data. Fair share fee deductions shall continue until the
18 effective date of a successor agreement or implementation of the
19 state's last, best, and final offer, whichever occurs first. The
20 Controller shall retain, from the fair share fee deduction, an amount
21 equal to the cost of administering this section. The state employer
22 shall not be liable in any action by a state employee seeking
23 recovery of, or damages for, improper use or calculation of fair
24 share fees.

25 (c) (1) Notwithstanding subdivision (b), any employee who is
26 a member of a religious body whose traditional tenets or teachings
27 include objections to joining or financially supporting employee
28 organizations shall not be required to financially support the

1 recognized employee organization. That employee, in lieu of a
2 membership fee or a fair share fee deduction, shall instruct the
3 employer to deduct and pay sums equal to the fair share fee to a
4 nonreligious, nonlabor organization, charitable fund approved by
5 the California Victim Compensation and Government Claims
6 Board for receipt of charitable contributions by payroll deductions.

7 *(2) Notwithstanding subdivision (b), any employee subject to a*
8 *fair share fee shall have the right, in lieu of a fair share deduction,*
9 *to instruct the employer to deduct and pay sums equal to the fair*
10 *share fee to a retirement savings plan of the employee's choosing.*

11 *If this paragraph is in conflict with a memorandum of*
12 *understanding that is in effect on January 1, 2013, the*
13 *memorandum of understanding shall be controlling while it*
14 *remains in effect. Thereafter, this paragraph shall apply and may*
15 *not be superseded by a subsequent memorandum of understanding.*

16 (d) A fair share fee provision in a memorandum of understanding
17 that is in effect may be rescinded by a majority vote of all the
18 employees in the unit covered by the memorandum of
19 understanding, provided that: (1) a request for the vote is supported
20 by a petition containing the signatures of at least 30 percent of the
21 employees in the unit; (2) the vote is by secret ballot; and (3) the
22 vote may be taken at any time during the term of the memorandum
23 of understanding, but in no event shall there be more than one vote
24 taken during the term. If the board determines that the appropriate
25 number of signatures have been collected, it shall conduct the vote
26 in a manner that it shall prescribe. Notwithstanding this
27 subdivision, the state employer and the recognized employee
28 organization may negotiate, and by mutual agreement provide for,
29 an alternative procedure or procedures regarding a vote on a fair
30 share fee provision.

31 (e) Every recognized employee organization that has agreed to
32 a fair share fee provision shall keep an adequate itemized record
33 of its financial transactions and shall make available annually, to
34 the board and to the employees in the unit, within 90 days after
35 the end of its fiscal year, a detailed written financial report thereof
36 in the form of a balance sheet and an operating statement, certified
37 as to accuracy by its president and treasurer or comparable officers.
38 In the event of failure of compliance with this section, any
39 employee in the unit may petition the board for an order compelling

1 this compliance, or the board may issue a compliance order on its
2 own motion.

3 (f) If an employee who holds conscientious objections pursuant
4 to subdivision (c) requests individual representation in a grievance,
5 arbitration, or administrative hearing from the recognized employee
6 organization, the recognized employee organization is authorized
7 to charge the employee for the reasonable cost of the representation.

8 (g) An employee who pays a fair share fee shall be entitled to
9 fair and impartial representation by the recognized employee
10 organization. A breach of this duty shall be deemed to have
11 occurred if the employee organization's conduct in representation
12 is arbitrary, discriminatory, or in bad faith.

13 ~~SECTION 1. Section 20305 of the Government Code is~~
14 ~~amended to read:~~

15 ~~20305. (a) An employee whose appointment or employment~~
16 ~~contract does not fix a term of full-time, continuous employment~~
17 ~~in excess of six months is excluded from this system unless:~~

18 ~~(1) He or she is a member at the time he or she renders that~~
19 ~~service and is not otherwise excluded pursuant to this article or by~~
20 ~~a provision of a contract.~~

21 ~~(2) His or her position requires regular, part-time service for~~
22 ~~one year or longer for at least an average of 20 hours a week, or~~
23 ~~requires service that is equivalent to at least an average of 20 hours~~
24 ~~a week for one year or longer, unless he or she elects membership~~
25 ~~pursuant to Section 20325.~~

26 ~~(3) His or her employment is, in the opinion of the board, on a~~
27 ~~seasonal, limited-term, on-call, emergency, intermittent, substitute,~~
28 ~~or other irregular basis, and is compensated and meets one of the~~
29 ~~following conditions:~~

30 ~~(A) The appointment or employment contract does not fix a~~
31 ~~term of full-time, continuous employment in excess of six months;~~
32 ~~but full-time employment continues for longer than six months;~~
33 ~~in which case membership shall be effective not later than the first~~
34 ~~day of the first pay period of the seventh month of employment.~~

35 ~~(B) The person completes 125 days, if employed on a per diem~~
36 ~~basis or, if employed on other than a per diem basis, completes~~
37 ~~1,000 hours within the fiscal year, in which case, membership shall~~
38 ~~be effective not later than the first day of the first pay period of~~
39 ~~the month following the month in which 125 days or 1,000 hours~~
40 ~~of service were completed. For purposes of this subdivision, "day"~~

1 means each eight-hour period of employment worked by an
2 employee paid on a per diem basis so that membership is effective
3 after he or she has completed 1,000 hours of compensated service
4 in a fiscal year.

5 (C) The person is employed by the Department of Forestry and
6 Fire Protection in one of the positions that provides state safety
7 membership pursuant to Section 20400 or state peace
8 officer/firefighter membership pursuant to Section 20392.

9 (4) He or she is a temporary faculty member of the California
10 State University and meets one of the following conditions:

11 (A) He or she works two consecutive semesters or three
12 consecutive quarters at half-time or more, and is not otherwise
13 excluded pursuant to this article, in which case, membership shall
14 be effective with the start of the next consecutive semester or
15 quarter if the appointment requires service of half-time or more.

16 (B) He or she works two consecutive semesters or three
17 consecutive quarters at a minimum teaching load of six weighted
18 units, and is not otherwise excluded pursuant to this article, in
19 which case membership shall be effective at the start of the next
20 consecutive semester or quarter, but not earlier than July 1, 2004,
21 if the appointment requires service of six weighted units or more.
22 This subparagraph does not apply to faculty members unless
23 provided for in a memorandum of understanding agreed upon, on
24 or after January 1, 2003, pursuant to Chapter 12 (commencing
25 with Section 3560) of Division 4 of Title 1, or authorized by the
26 Trustees of the California State University for employees excluded
27 from collective bargaining.

28 (5) He or she is a member of the Board of Prison Terms, the
29 State Personnel Board, or the State Air Resources Board and elects
30 to become a member pursuant to Section 20320.

31 (6) He or she is participating in partial service retirement,
32 pursuant to Article 1.7 (commencing with Section 19996.30) of
33 Chapter 7 of Part 2.6.

34 (7) He or she is included by specific provision of the board
35 relating to the exclusion of less than full-time employees.

36 (b) This section shall supersede any contract provision excluding
37 persons in any temporary or seasonal employment basis and shall
38 apply only to persons entering employment on and after January
39 1, 1975. Except as provided in Section 20502, no contract or
40 contract amendment entered into after January 1, 1981, shall

- 1 ~~contain any provision excluding persons on an irregular~~
- 2 ~~employment basis.~~

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